

Decision 05-02-021 February 10, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southwest Gas Corporation for the Issuance of a Limited Exemption from the Affiliate Transaction Rules Adopted in D.97-12-088. (U 905 G)

Application 04-11-010
(Filed November 9, 2004)

**OPINION ON SOUTHWEST GAS CORPORATION'S
APPLICATION FOR LIMITED EXEMPTION FROM AFFILIATE
TRANSACTION RULES**

Summary

This decision grants Southwest Gas Corporation (Southwest) a limited exemption from the Commission's Affiliate Transaction Rules adopted in Decision (D.) 97-12-088, for transactions between Southwest and an affiliate, Black Mountain Gas Company (Black Mountain). The limited exemption applies only to transactions between Southwest and Black Mountain occurring outside of California, and does not affect Southwest's California jurisdictional customers.

Background

The Commission adopted Affiliate Transaction Rules in D.97-12-088, modified by D.98-08-035, and further clarified by D.98-11-027. The Affiliate Transaction Rules govern the relationships between regulated utilities and utility affiliated entities.

On November 9, 2004 Southwest filed Application (A.) 04-11-010 (Application) requesting that the Commission grant Southwest a limited

exemption under Rule II.H,¹ and that the exemption be granted on an expedited *ex parte* basis. Southwest requests the limited exemption for transactions between Southwest and Black Mountain solely in Southwest's capacity of serving Southwest's jurisdictional areas in Arizona and wholly outside of California.

Southwest explains that it expanded its service territory in and around Phoenix, Arizona, and Page, Arizona² and acquired customers previously served by Black Mountain. Black Mountain is a public service corporation subject to the jurisdiction of the Arizona Corporation Commission (ACC). Southwest states that Black Mountain operates as a shell corporation for the Phoenix natural gas operations, but continues as a wholly owned subsidiary of Southwest serving the propane customers in Page. Southwest also explains that it intends to dissolve Black Mountain.

No responses to Southwest's Application have been received.

Discussion

Under Rule II.H³ adopted in D.97-12-088, we provided a limited exemption from Affiliate Transaction Rules for multi-state utilities provided that the transactions between the utility and affiliate are solely for serving customers outside of California. Southwest's description of these transactions with its

¹ Rule II.H provides that: "A California utility which is also a multi-state utility and subject to the jurisdiction of other state regulatory commissions, may file an application, served on all parties to this proceeding, requesting a limited exemption from these Rules or a part thereof, for transactions between the utility solely in its capacity serving its jurisdiction areas wholly outside of California, and its affiliates. The applicant has the burden of proof." (77 CPUC 2d 422, 497 (1997).)

² Black Mountain served approximately 8,400 natural gas customers in Phoenix, and 1,300 propane customers in and around Page.

³ All references to Rules are Affiliate Transaction Rules, unless otherwise referenced.

affiliate, Black Mountain, included in its Application is consistent with the language in Rule II.H which provides for a limited exemption.

Although we are granting Southwest a limited exemption, we remind Southwest that if any transactions with Black Mountain affect California customers, including, but not limited to, changes in rates or service, then Southwest will be required to meet all of the Affiliate Transaction Rules. The limited exemption should not increase costs, or decrease service to Southwest's California jurisdictional customers, including subsidizing the affiliate through the use of an asset without reasonable compensation (Rule V.C), subsidizing affiliate overhead costs (Rule V.E), joint marketing (Rule V.F), providing labor to the affiliate without reasonable compensation (Rule V.G) and violation of transfer pricing rules (Rule V.H). Should any of the activities or transactions between Southwest and Black Mountain subsequently affect California jurisdictional customers, then the limited exemption is no longer in effect, and Southwest will be required to meet all Affiliate Transaction Rules for Black Mountain.

Conclusion

Southwest should be granted a limited exemption from the Affiliate Transaction Rules consistent with Rule II.H.

Categorization and Need for Hearings

In Resolution ALJ 176-3142 dated November 19, 2004, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Given this status public hearing is not necessary and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3142.

Comments on Draft Decision

Since this proceeding is uncontested and we grant the relief requested, pursuant to Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is waived.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Bruce DeBerry is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Southwest expanded its service territory in and around Phoenix, Arizona, and added natural gas customers previously served by Black Mountain.
2. Southwest expanded its service territory in and around Page, Arizona, and acquired propane customers previously served by Black Mountain.
3. Black Mountain is a public service corporation subject to the jurisdiction of the ACC.
4. Black Mountain is a wholly-owned subsidiary of Southwest for the purposes of serving the propane customers in Page, Arizona.
5. All of Black Mountain's utility operations are conducted in Arizona. Black Mountain does not operate in California.

Conclusions of Law

1. This is a ratesetting proceeding.
2. No hearings are necessary.
3. Southwest's transactions with Black Mountain are solely for serving customers outside of California, and do not affect California jurisdictional customers, consistent with the provisions in Affiliate Rule II.8, allowing for a limited exemption.
4. It is reasonable to grant Southwest a limited exemption under Affiliate Transaction Rule II.H, for transactions with Black Mountain.

5. The decision to provide Southwest with a limited exemption for transactions with Black Mountain should be effective today.

O R D E R

IT IS ORDERED that:

1. Southwest Gas Corporation's application for a limited exemption from the Affiliated Transaction Rules for its transactions with Black Mountain Gas Company solely to serve Arizona jurisdictional customers is granted.

2. Application 04-11-010 is closed.

This order is effective today.

Dated February 10, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

Comr. Grueneich recused herself
from this agenda item and was not
part of the quorum in its consideration.